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8 ATTORNEYS FOR
9 West Coast Fence, Inc.
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UNITED STATES BANKRUPTCY COURT
EASTERN NORTHERN DISTRICT OF CALIFORNIA
(Modesto Division)

In re:) Case No. 10-47419-A-7
12 WEST COAST FENCE CO., INC.,) CHAPTER 7
13)
14) Debtors.) Date: November 15, 2010
15)) Time: 9:00 a.m.
16)) Location: U.S. Bankruptcy Court
17)) 1200 I St., 7th Floor
18)) Sacramento, CA
19)) Courtroom: 28
20)) Judge: Hon. Michael McManus
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**DECLARATION RE: MOTION FOR RELIEF FROM THE AUTOMATIC STAY
AND FOR ORDER DIRECTING THE DEBTOR TO SURRENDER REAL
PROPERTY**

I, William J. Healy, do hereby declare:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and several districts and divisions of the United States District Court in the State of California, including this court. I am a member of the law firm of Campeau Goodsell Smith, attorney herein for West Coast Fence, Inc. ("WCF" or "Landlord").

1 2. I submit this declaration of my own personal knowledge except as to those matters
2 upon which I am informed and believe and as to those matters I am informed and believe
3 them to be true. If called to testify as to the matters stated herein I could do so in an honest
4 and competent manner. At no time do I intend to waive any privileges, including the attorney
5 client and work product privileges.

6 3. This declaration is submitted as part a motion for an order granting Landlord relief
7 from the automatic stay to secure and recover exclusive possession of the non-residential
8 commercial property located at 2786 Aiello Dr., San Jose, CA 95111(the “Real Property”)
9 from the Debtor and all others, asserting a right of possession to the Real Property; to
10 prosecute the pre-petition unlawful detainer action entitled West Coast Fence, Inc. v. South
11 Y Fireplace, Inc., dba West Coast Fence, Santa Clara County Superior Court Action #
12 1-10-CV-184542 (“UD Action”); to permit Landlord to accept Debtor’s and the Chapter 7
13 Trustee’s surrender of the Real Property; and to exercise its rights pursuant to California
14 Civil Code Section 1980, et seq and California law relative thereto (“Motion”).

15 4. I prepared the accompanying Motion based on, inter alia, a review of the Debtor’s
16 various schedules, search of various public records, and review of documents provided to me
17 by my client. Related documents will be made available to the court, the trustee, and even
18 Debtor upon request. Based on a review of the Debtor’s schedules, various public records,
19 and related client documents as well as communications with WCF, I believe the contents of
20 the Motion are true and correct.

21 5. Debtor is actually South Y Fireplace, Inc. and is not West Coast Fence Co., Inc. (See
22 Statement of Financial Affairs, Section 18).

23 6. Debtor leased the Real Property from Landlord pursuant to a California Commercial
24 Lease Agreement dated September 24, 2008 (“Lease”). (See Schedule G)(Landlord will
25 provide the court, the Chapter 7 Trustee, and Debtor with a copy of the Lease upon request.
26 The Lease called for, inter alia, Debtor’s monthly lease payments of \$6,000, Debtor’s
27 payment of various utilities, and for Debtor to secure insurance. The Lease expired on

1 September 30, 2009.

2 7. Prior to October 8, 2010 Debtor, inter alia, Debtor was significantly in arrears on
3 lease payments and owed Landlord approximately \$54,000.00 in pre-petition lease
4 payments. (See Schedule F)

5 8. On October 8, 2010 Landlord commenced an unlawful detainer action against Debtor
6 seeking, inter alia, to secure and recover exclusive possession of the Property from the
7 Debtor and all others, entitled West Coast Fence, Inc. v. South Y Fireplace, Inc., dba West
8 Coast Fence, Santa Clara County Superior Court Action # 1-10-CV-184542 (“UD Action”)
9 (See Schedule F and Statement of Financial Affairs Section 4).

10 9. On October 14, 2010, Debtor commenced this bankruptcy.

11 10. Relief from stay is warranted pursuant to 11 U.S.C. 362, including sections 362 (d),
12 including sections 362 (d) (1) and (2) and because Debtor and the Trustee are not paying
13 rent, have not provided proof of insurance, and are not conducting business at the Real
14 Property and as such are interfering with Landlord’s right to occupy and possess the Real
15 Property.

16 11. In addition, as the Lease terminated pre-petition the stay should not apply to
17 Landlord. (See Section 362 (b)(10) and *In re Windmill Farms*, 841 F.2d 1467 (9th Cir. 1988);
18 *In re Acorn Investments, Inc.*, B.R. 506, 510 (S.D. Cal. 1981); and *In re Elm Inn, Inc.*, 942
19 F.2d 630 (9th Cir. 1991).

20 12. On Friday, October 15, 2010 and Monday, October 18, 2010 Landlord’s counsel left
21 voice mail messages with Debtor’s counsel and the Trustee indicating, inter alia, that
22 Landlord wished to pursue surrender and possession of the Real Property by stipulation
23 rather than by formal motion and on Monday, October 18, 2010, emailed a proposed
24 stipulation to Debtor’s counsel and the Trustee. Debtor’s counsel has ignored all
25 communications.

26 13. During the week of October 18, 2010, the Trustee responded and indicated that he
27 intended to visit the Real Property during the week of October 25, 2010 before responding to
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1 the proposed stipulation.

2 14. By way of this motion Landlord does not waive its right to submit an administrative
3 claim. In addition, by way of this motion Landlord, which is also a party to a secured
4 promissory note with Debtor, does not waive its rights relative to the promissory note or
5 related collateral. In addition, by way of this motion Landlord does not waive its right to
6 assert an objection to the jurisdiction of this court based on the potential mis-filing of this
7 matter in the Eastern District as opposed to the Northern District where the Debtor operated,
8 had its principal place of business, and had its assets. Lastly, by way of this motion Landlord
9 does not waive its right to assert damage claim for the continued misuse of Landlord's name
10 as a debtor-something that was brought to the attention of the Debtor's counsel and the
11 Trustee as early as October 15, 2010.

12 I declare under penalty of perjury that the foregoing is true and correct and that this
13 declaration was executed at San Jose, California, on October 29, 2010.

14 /s/ William J. Healy
15 William J. Healy
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